

II. Summary of Claim Rejections

In the present Office Action mailed April 26, 2002, the Examiner made the following claim rejections:

- Claims 1-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over a combination of:
 - (a) U.S. Patent Number 5,845,417 to Reed et al. (hereafter referred to as Reed),
and
 - (b) European Patent Application Number 1,074,193 to Opal Limited (hereafter referred to as Opal); and
- Claims 1-14 and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over a combination of:
 - (a) French Patent Application Number 2,670,369 to Colesnicenco Nicolae (hereafter referred to as Colesnicenco), and
 - (b) Opal.

III. Summary of Claims

Claims 1-16 are currently pending in the application, with claims 1 and 9 being independent claims. Independent claim 1 generally recites an article of footwear having an upper, a sole structure attached to the upper, an air-filled bladder in fluid communication with ambient air and attached to the footwear, and a filter in fluid communication with the ambient air and the bladder. The filter is structured to permit the ambient air to enter the bladder and restrict liquids and particulates from entering the bladder. Independent claim 9 generally recites a similar structure, wherein the filter is a polytetrafluoroethylene (PTFE) filter.

IV. The Claims Patentably Distinguish Over The Applied Prior Art

First Rejection - Combination of Reed and Opal

Reed discloses multiple embodiments of a ventilated shoe having a fluid system includes a filter in fluid communication with a pump. In general, the fluid system draws air and moisture from the interior of the upper and discharges the air and moisture to the exterior of the upper. Although specific information regarding the structure of the filter is not provided, Reed states that “[m]oisture and liquid, along with air, may be drawn through the filter 214 and into the pump cell” (Reed, column 8, lines 48-49). In addition, Reed states that “air is drawn through the filter and into the inlet of intake tube 258. The air and/or liquid then passes through intake valve 264 and through the monotube 260 into the pump cell 254” (Reed, column 10, lines 4-7). The filter disclosed in Reed permits, therefore, the passage of both air and liquids.

In discussing conventional insoles, Reed states “it is very difficult to remove moisture and the odor produced as a result of moisture which collects in the shoe due to foot sweating caused by poor shoe ventilation. Since most people use their shoes for long periods of time, it is essential to properly maintain and ventilate the shoes in order to avoid foot diseases, such as, for example, water-eczema” (Reed, column 1, lines 24-30). Accordingly, a beneficial attribute of the system disclosed in Reed is the capacity for liquids to pass through the filter, thereby removing the liquids from the area surrounding the foot.

Opal discloses an article of footwear having an upper with an arch portion. As stated in Opal, “[a] plurality of openings (24) are located in the arch portion (18)....A waterproof, breathable membrane (26) larger than the area of the openings (24) is secured to the upper part (16) across the openings” (Opal, column 3, lines 28-40). Furthermore, the “waterproof and breathable membrane is sandwiched between the inside and outside surfaces in the arch portion of the upper part...” (Abstract). The membrane may be formed of a material such as Gore-Tex, which includes polytetrafluoroethylene (PTFE).

In establishing a prima facie case of obviousness, the rejection must demonstrate a suggestion or motivation to modify the references. As discussed in MPEP §2143.01, the proposed modification cannot render the prior art unsatisfactory for its intended purpose, and the

proposed modification cannot change the principle of operation of a reference. The combination of the fluid system disclosed in Reed with the material disclosed in Opal would impermissibly render Reed unsatisfactory for its intended purpose and alter the principle of operation of Reed. As discussed in Reed, the filter permits the passage of liquids in order to remove liquids from the area surrounding the foot, thereby preventing conditions such as water-eczema. Utilizing the material disclosed in Opal would effectively prevent the passage of liquids, thereby rendering Reed unsatisfactory for its intended purpose of ventilating the footwear and removing water. Similar considerations demonstrate that the combination would also change the principle of operation of Reed.

Independent claim 1 recites an article of footwear having an upper, a sole structure, a bladder, and “a filter in fluid communication with said bladder and ambient air, said filter being structured to permit ambient air to enter said bladder and restrict liquids and particulates from entering said bladder.” Additionally, independent claim 9 recites a similar structure wherein the filter is a PTFE filter. Given the operation of Reed discussed above, Applicants respectfully submit that Reed and Opal provide no teaching or suggestion regarding the combination of the ventilation system disclosed in Reed and the material disclosed in Opal, as proposed in the rejection.

As a final matter, the rejection of the claims over Reed and Opal states that Opal teaches a filter for filtering air that is received within a bladder of a shoe. Upon review of Opal, Applicants discern no disclosed structure corresponding with a bladder. Rather, the material disclosed in Opal is sandwiched between the inside and outside surfaces of the upper and permits the transfer of air through the upper.

Based upon the discussion above, Applicants submit that independent claims 1 and 9 are patentable over the combination of Reed and Opal. Furthermore, dependent claims 2-8 and 10-16 are patentable for at least the same reasons and by virtue of the additional matter recited therein.

Second Rejection - Combination of Colesnicenco and Opal

Colesnicenco discloses a fluid system that may be incorporated into an article of footwear for ventilating the interior of the footwear. A professionally-prepared translation of Colesnicenco was enclosed with the Amendment in response to the Office Action mailed May 22, 2002. Referring to page 3, lines 20-22 of the Colesnicenco translation, the air filter consists of "a filtering material (1b) such as felt or another filtering material." Felt is recognized as a cloth made of wool and fur often mixed with natural or synthetic fibers, or felt may be a firm woven cloth of wool or cotton heavily napped and shrunk. The recommendation that "felt or another filtering material" be utilized as the filter material in Colesnicenco does not teach or suggest the use of a filter that is structured to restrict the passage of liquids through the filter material, as claimed in both independent claims 1 and 9.

As discussed above, Opal discloses footwear wherein a portion of the upper includes an air-permeable member formed of Gore-Tex that may restrict the passage of liquids. Whereas Colesnicenco teaches a fluid system for mechanically-ventilating footwear that incorporates conduits, pumps, and valves to forcefully transfer air, Opal merely teaches the diffusion of air from the interior of the footwear to the exterior, and vice-versa, through the Gore-Tex material. The fact that Gore-Tex may be utilized in footwear is not sufficient to suggest to one skilled in the art that the Gore-Tex material may be given a specialized purpose in a complex mechanical system that pumps air into the upper. Based upon the above discussion, neither Colesnicenco nor Opal incorporate a teaching or suggestion that would motivate one skilled in the relevant art to make the combination suggested in the rejection.

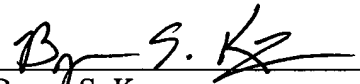
Accordingly, Applicants submit that independent claims 1 and 9 are patentable over the combination of Colesnicenco and Opal, and that dependent claims 2-8, 10-14, and 16 are patentable for at least the same reasons and by virtue of the additional matter recited therein.

V. Conclusion

In view of the foregoing, the Applicants respectfully submit that all claims are in a condition for allowance. The Applicants respectfully request, therefore, that the rejections be withdrawn and that this application now be allowed.

This Amendment is being timely filed by facsimile transmission on December 10, 2002. Should additional fees or an extension of time be deemed necessary for consideration of this Amendment, such fees or extension are hereby requested and the Commissioner is authorized to charge deposit account number 19-0733 for the payment of the requisite fee. If anything further is desirable to place the application in even better form for allowance, the Examiner is respectfully requested to telephone the undersigned representative at (503) 279-6330.

Respectfully submitted,

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